

NOTICE OF EXEMPT RULEMAKING

PREAMBLE

1. **Article, Part or Section Affected (as applicable):** **Rulemaking Action:**

R19-2-401, Article 4, Advanced Deposit Wagering, Teletracking, and Simulcasting Amend
2. **Citations to Agency's statutory rulemaking authority to include authorizing statute (general) and the implementing statute (specific) and the statute or session authorizing the exemption:**

Authorizing statute: A.R.S. §5-104(A)(2), Laws 2011, Ch. 35 §10(B)
Implementing statute: A.R.S. §§5-104(F), 5-104(R), 5-113.01, 5-230
Authorizing Exemption: Fifty First Legislature, Second Regular Session, 2014
Senate Bill 1282, Section 9, Exemption from Rulemaking until July 1, 2015.
For the purposes of this act, the Arizona Department of Racing is exempt from the rulemaking requirements of Title 41, chapter 6, Arizona Revised Statutes, for one year after the effective date of this act, except that the department shall file the rules pursuant to Title 41, chapter 6, Arizona Revised Statutes, hold at least one public hearing and file the rules with the secretary of state.
3. **The effective date of the rule and the agency's reason it selected the effective date:**

Effective date: Upon filing with Secretary of State

Reason for Effective Date: The existing rule purports to authorize internet gambling which is illegal in Arizona. See, A.R.S. Title 13, Chapter 33, Gambling, A.R.S. §13-3301 *et seq.* The existing rule must be repealed as soon as is practicable because it contradicts Arizona criminal law.
4. **A list of all notices published in the Register as specified in R1-1409(A) that pertain to the record of the exempt rulemaking:**

None
5. **The agency's contact person who can answer questions about the rulemaking:**

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6. **As agency's justification and reason why a rule should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**

On May 5, 2014, former Governor Jan Brewer signed state advance-deposit wagering (ADW) legislation into law. The ADW legislation (SB 1282), permits betting on horse and Greyhound races by telephone. "Telephone" is defined as "...any device that a person uses for voice communications in connection with the services of a telephone company." The law is intended to make Arizona tracks more competitive with tracks in the 37 other states that already have ADW.

Senate Bill 1282 authorized Advance Deposit Wagering ("ADW") and specifies that the owner of the ADW account may only make an advance deposit pari-mutuel wager by telephone using voice communication. Additionally, the Bill further states, "that this act does not authorize the state to opt in to any Federal law, rule or regulation that allows legalized gaming or to approve or enter into any framework that allows legalized online gaming".

A.R.S. §5-112. P and Q, respectively state, "The owner of the advance deposit wagering account may make an advance deposit pari-mutuel wager only by telephone" and "Only the advance deposit wagering provider may make an advance deposit wager, pursuant to wagering instructions the owner of the monies issues by telephone." Neither Senate Bill 1282 nor A.R.S. §5-112 authorizes the use of the internet, web-based, native applications or hybrid communication mechanisms.

Additionally, on May 5, 2014 Janice K. Brewer, former Governor, authored a letter to Ken Bennett, former Secretary of State, where she indicated that she signed Senate Bill 1282 stating, "that the bill is explicitly clear that Arizona is authorizing advanced deposit wagering and expressly prescribes that the wager must be placed over the telephone. Senate Bill 1282 does not authorize and cannot be construed as authorizing Internet gaming." She further indicates that, "it is the well-established position of the State that Internet gaming is not authorized in Arizona and, if pursued, the State will steadfastly and aggressively litigate any attempt to commence Internet gaming in Arizona.

On October 1, 2014, the Racing Commission considered and approved new rules implementing the ADW legislation. Rule R19-2-401(11) changed the definition contained in the legislation to read, "Telephone" means Voice over Internet Protocol (VoIP), cellular voice services, Interactive Voice Response (IVR) computer systems and native telephone functionality, but does not include Internet, web-based, or hybrid communication mechanisms."

On January 30, 2015, the Department of Racing approved the permits of the ADW providers. On February 28, 2015, the Department discovered that one of the ADW providers, based on the new definition of "telephone", launched an application ("App") that can be downloaded from the iTunes App Store to an iPhone or tablet with the ability to place on-line wagers. The App has the following capabilities:

- Full betting menu with all runners and riders
- Fast bet functionality to process your bet within two taps
- Handicapping Information

- Presenter Picks and Selections
- Access to wager and bet on over 150 horse racing tracks worldwide
- Live Streaming for all the tracks
- Race Alerts
- Account Management capabilities, such as funding and withdrawal
- Mobile App wagering services available in Arizona.

Based on discussions with representatives of the ADW provider, they have clearly admitted that the downloaded App allows users of iPhones and tablets the ability to place racing wagers at Arizona operated race tracks via the internet. As a result of this iPhone and tablet application, other ADW providers have indicated that they will also launch their own mobile phone Apps to also allow internet wagering, based on the new definition of "telephone" contained in Rule R19-2-401(11).

The Department of Racing is responsible for regulating the Advance Deposit Wagering activity and must stop the internet wagering activity immediately. This type of internet wagering is prohibited in the State of Arizona. A.R.S. Title 13, Chapter 33, Gambling, A.R.S. § 13-3301, does not define Internet gambling as permissible or as a regulated gambling activity. Therefore, the Advanced Deposit Wagering ADW provider is in violation of A.R.S. § 13-3303, Promotion of Gambling, C5F, and A.R.S. § 13-3304, Benefitting from Gambling, C1M.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The summary of the economic, small business, and consumer impact, if applicable:

None

10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package if applicable:

None

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:

Not Applicable

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not limited to:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reason why a general permit is not used:

No, No, Not applicable,

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No, Not applicable, None

c. Whether a person, submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No

13. A list of any incorporated by reference material and its location in the rule:

None

14. Whether the rule was previously made, amended, repealed, or renumbered as an emergency rule. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:

None

15. The full text of the rule follows:

Article 4, Advanced Deposit Wagering, Teletracking, and Simulcasting,

R19-2-401. Definitions

1. (No change)
2. (No change)
3. (No change)
4. (No change)
5. (No change)
6. (No change)
7. (No change)
8. (No change)
9. (No change)
10. (No change)

11. "Telephone" means ~~Voice over Internet Protocol (VOIP), cellular voice services, Interactive Voice Response (IVR), computer systems, and native telephone functionality, but does not include Internet, web-based, or hybrid communication mechanisms,~~ any device that a person uses for voice communications in connection with the services of a telephone company but does not include digital devices utilizing non-verbal communications.

12. (No change)

13. (No change)

14. (No change)

15. (No change)

16. (No change)

17. (No change)

18. (No change)